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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81073; File No. SR-NYSE-2017-20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Listing Standards for Special Purpose Acquisition Companies to Change its Requirements with Respect to the Approval of a Business Combination July 3, 2017.

### I. Introduction

On May 1, 2017, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend listing standards for Special Purpose Acquisition Companies (“SPACs”)<sup>3</sup> to amend the Exchange’s listing standards with respect to its shareholder vote requirement for approval of a Business Combination. The proposed rule change was published for comment in the Federal Register on May 19, 2017.<sup>4</sup> On May 23, 2017, NYSE filed Amendment No. 1 with the Commission to amend and restate its proposal to, among other things, require a majority of a

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that throughout this order we have used the term “SPAC” or “SPACs”, but these terms have the same meaning as “Acquisition Company” or “Acquisition Companies” which are the terms used for listing, and continued listing, in Section 102.06 of the NYSE Listed Company Manual (“Manual”).

<sup>4</sup> See Securities Exchange Act Release No. 80677 (May 15, 2017), 82 FR 23123 (May 19, 2017) (“Notice”).

SPAC's independent directors to approve a Business Combination, until a SPAC has satisfied the Business Combination condition.<sup>5</sup> The Commission received no comments on the proposal. The Commission is publishing this notice on Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal, as Modified by Amendment No. 1

### A. General Background on SPACs

A SPAC is a special purpose company that raises capital in an initial public offering ("IPO") to enter into future undetermined business combinations (a "Business Combination") through mergers, capital stock exchanges, assets acquisitions, stock purchases, reorganizations or similar business combinations with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets of the SPAC held in trust ("Business Combination Condition"). Section 102.06 of the Manual sets forth the listing standards that apply to SPACs. In addition to requiring SPACs to meet certain quantitative standards, Section 102.06 of the Manual provides additional investor protection safeguards for shareholders investing in SPACs.<sup>6</sup>

### B. Proposed Change to Shareholder Vote Requirements

Section 102.06 of the Manual sets forth, among other things, the approval process of SPAC Business Combinations. If the SPAC holds a shareholder vote on a Business Combination for which the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act in advance of the shareholding meeting, the Business

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<sup>5</sup> In Amendment No. 1, the Exchange also proposed to add two new defined terms, "Business Combination" and "Business Combination Condition", using the existing language in Section 102.06 of the Manual, concerning listing standards for SPACs, as the definition for these defined terms. Therefore, these changes merely provided clarification and do not substantively change the SPAC standards or the Business Combination requirements for SPACs. See also, note 9, infra.

<sup>6</sup> See also, NYSE SPAC Continued Listing Standards, Section 802.01B.

Combination must be approved by a majority of the votes cast by public shareholders at the shareholder meeting at which the Business Combination is being considered.<sup>7</sup> Until the Business Combination Condition is met each Business Combination of a SPAC, utilizing the voting option<sup>8</sup>, must be approved by a majority of the public shareholders. The Exchange proposes to amend the approval requirement from a majority of the votes cast by public shareholders to a majority of the votes cast at the shareholder meeting at which the Business Combination is being considered.

C. Proposed Change to Require Independent Director Approval

The Exchange, in Amendment No 1, also proposed to add a new requirement that each Business Combination to be approved by a majority of the SPAC's independent directors, until the SPAC satisfies the Business Combination Condition. The Exchange also made some clarifying changes to its proposal.<sup>9</sup>

The Exchange represented that its amended proposal would harmonize its SPAC listing standards with those of the NASDAQ Stock Market and NYSE MKT. NYSE stated that both the NASDAQ Stock Market and NYSE MKT have comparable voting and independent director requirements for SPACs as those being proposed by the Exchange in the amended filing.<sup>10</sup>

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<sup>7</sup> See Section 102.06(a) of the Manual. Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. See note (B) of Section 102.01 of the Manual.

<sup>8</sup> See note 15, infra.

<sup>9</sup> See note 5, supra.

<sup>10</sup> See NASDAQ IM 5101-2 and Section 119 of the NYSE MKT Company Guide.

### III. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-20 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2017-20 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

#### IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder.<sup>11</sup> Specifically, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal seeks to modify the requirements in the Manual with respect to how a SPAC may seek approval of a Business Combination in two ways. First, the Exchange is proposing to require a majority of all votes cast at a shareholder meeting to approve a Business Combination instead of a majority of votes cast by public shareholders. Second, the Exchange is

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<sup>11</sup> 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

proposing to require the approval of a majority of a SPAC's independent directors until the Business Combination Condition is satisfied.

The Commission notes that the proposed changes are substantially similar to previously approved requirements of the NASDAQ Stock Market and NYSE MKT.<sup>13</sup> These requirements have previously been subject to full public notice and comment period and have been found to be consistent with the Act. The Commission also notes, under the Exchange rules, that the public shareholders of an Exchange listed SPAC will continue to have a conversion right which allows them to convert their shares for a pro rata share of the cash held in the trust account if they vote against a Business Combination, provided that the Business Combination is approved and consummated.<sup>14</sup> The Commission believes that this provision should help to provide protections to those shareholders who have voted against the Business Combination. Moreover, requiring a majority of the independent directors to approve a Business Combination should provide further protection for public shareholders by including an additional level of review.

In approving the same provisions for the Nasdaq Stock Market that NYSE is proposing, the Commission stated that the conversion rights will help to ensure that public shareholders who disagree with management's decisions with respect to a Business Combination have adequate remedies. In addition, the Commission noted that requiring the majority of the independent directors to approve a Business Combination should help to ensure that a Business Combination

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<sup>13</sup> See Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (SR-Nasdaq-2008-013) and Securities Exchange Act Release No. 63366 (November 23, 2010), 75 FR 74119 (November 30, 2010) (SR-NYSEAmex-2010-103). SR-NYSEAmex-2010-103 filing was noticed and immediately effective upon filing. This was a copycat filing of the previously approved SR-Nasdaq-2008-013 and was filed under Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6). See 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See Section 102.06(b) of the Manual.

is entered into by the SPAC after a fair and impartial decision. The Commission continues to believe that these two provisions together, in addition to the other requirements in the Exchange's SPAC listing and continued listing standards both prior to, at the time of and after a Business Combination, should continue to adequately protect public investors of SPACs upon approval of the Exchange's proposal.<sup>15</sup>

Based on the foregoing, the Commission finds that the proposed changes to SPAC listing standards are consistent with the requirements of the Act.

V. Accelerated Approval of the Proposal, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30<sup>th</sup> day after publication of Amendment No. 1 in the Federal Register. Amendment No. 1 requires a majority of a SPAC's independent directors to approve a Business Combination, until a SPAC has satisfied the Business Combination Condition and contains additional clarifying amendments.<sup>17</sup> The Commission notes that the remainder of the proposed rule change is not being amended and was subject to a full notice-and-comment period. The Commission further

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<sup>15</sup> The Commission notes that amending the vote requirement for approval of a Business Combination to all shareholders rather than public shareholders may also help prevent greenmail situations that have arisen over recent years with SPACs. NYSE recently adopted a tender offer option for a SPAC to complete a Business Combination, rather than a shareholder vote, to address greenmail concerns. Greenmail is a situation where a particular, or group of, hedge funds and other activist investors employ a strategy of acquiring an interest in a SPAC. These SPAC investors then use their voting rights as a threat to block a proposed Business Combination unless additional consideration is provided to them which is not provided to other shareholders. See Securities Exchange Act Release No. 80199 (March 10, 2017), 82 FR 13905, 13907 (March 15, 2017) (The Commission approving a SPAC related filing describing the threat of greenmail).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See note 5, supra.

notes that Amendment No. 1 would bring the proposal to align with the requirements of other national securities exchanges, whose proposals were subject to notice and comment, and does not raise any novel regulatory concerns. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED THAT pursuant to Section 19(b)(2) of the Act<sup>18</sup> that the proposed rule change, as modified by Amendment No.1, (SR-NYSE-2017-20) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).



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